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State of New York Public Employment Relations Board Decisions from September 12, 1989

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from September 12, 1989

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK CITY TRANSIT AUTHORITY

CASE NO. DR-008

Upon A Petition for Declaratory Ruling.

PROSKAUER, ROSE, GOETZ & MENDELSON, ESQS. (M. DAVID
ZURNDORFER, ESQ., of Counsel), for Petitioner

GLADSTEIN, REIF & MEGINNISS, ESQS. (WALTER M.
MEGINNISS, ESQ., of Counsel), for Respondent

BOARD DECLARATORY RULING

This matter comes to us on appeal by the Amalgamated Transit Union, Division 726, AFL-CIO (ATU) from certain portions of a recommended declaratory ruling issued by the Director of Public Employment Practices and Representation (Director) in response to a petition for a declaratory ruling pursuant to §210 of PERB's Rules of Procedure (Rules) by the New York City Transit Authority (NYCTA).

As to those portions of the Director's recommended declaratory ruling which are not the subject of an appeal to this Board, the recommended declaratory ruling is deemed final pursuant to §210.3 of the Rules.

As to the matters now before us, the Board issues its declaratory ruling with reference to the nine distinguishable demands which are the subject of ATU's appeal, as follows:

I. Common Demand 42

All personnel on Restricted Duty shall be assigned work in their own Division when positions are

available in their own division. In the event no position is open in their division when assigned to Restricted Duty said employee will be given the opportunity to transfer back into their division when a position opens up.

The Director found this demand to be nonmandatory because it would require that the NYCTA assign employees on restricted duty to particular vacant positions, and the decision to fill vacancies is a management prerogative which is nonmandatory, citing our decision in City of Saratoga Springs, 16 PERB ¶3058 (1983). In City of Saratoga Springs, we held nonmandatory a demand that "newly created and vacant positions shall be filled . . . immediately." We so found because it is a management prerogative for an employer to determine whether or not it will fill vacant positions.

The ATU argues in its exceptions that our decisions in City of Schenectady, 21 PERB ¶3022 (1988), and Niskayuna PBA, 14 PERB ¶3067 (1981), are controlling here, because the demand may properly be interpreted as reposing in the NYCTA the authority to decide if positions are "open" or "available". In those cases we determined that, so long as the decision to fill vacancies continues to rest with the employer, demands which would establish a preference in assignments of employees on the basis of seniority are mandatory. (See City of Schenectady, supra, at 3050.)

Notwithstanding the ATU's contentions, it is our determination that Common Demand 42 is reasonably read as limiting the discretion of the NYCTA to determine whether

positions are "available" and when a position "opens up" to persons on restricted duty. The demand thus may be construed to divest management of the right to determine whether positions may be filled by persons on restricted duty, and, indeed, whether they will be filled at all. It accordingly goes beyond the scope asserted by the ATU of establishing nothing more than an in-division preference in the assignment of restricted duty employees and requiring transfer of such employees who work out-of-division back to their former division when positions "open up" there. Because the demand seeks to compel the NYCTA to fill positions as well as to grant division preference in the filling of restricted duty assignments, it is a nonmandatory subject of negotiation in keeping with our decision in City of Saratoga Springs, supra.

II. Common Demand 47

Add the following sentence to Management's Rights:
"provided that management's exercise of the rights stated herein shall not conflict with any provision of this Agreement and shall be consistent with its duties under the Taylor Law."

The Director found Common Demand 47 to be nonmandatory because it does nothing more than require particular compliance with the Public Employees' Fair Employment Act (Act). We read the demand somewhat differently. The demand seeks to limit the scope of the management rights clause. One such limitation would make it clear that the ATU does not waive, in agreeing to the management rights clause, any

Taylor Law right which it may have to negotiate terms and conditions of employment. We, accordingly, do not construe the demand as merely seeking language which is redundant or duplicative of the Act, but construe it, instead, as an effort by the ATU to assure that the management rights clause will not be alleged to constitute a contractual waiver of Taylor Law rights which would otherwise exist. Since we have previously held that such a waiver may take place if it is knowing, intentional and unambiguous,^{1/} we find that this demand constitutes a mandatory subject of negotiation.

III. Common Demand 62

Demand 62(a)

The supplementary fund and program of health and welfare benefits now provided must be substantially increased in order to sufficiently underwrite the current necessary medical expenses.

Demand 62(b)

A contribution shall be made to the Health Benefit Trust for employees retiring after April 1, 1988, their dependents, and for surviving spouses to provide the following benefits.

1. Major Medical
2. Prescription Drugs
3. Vision Care
4. Schedule of Allowance Payments to reflect 1988 schedule, and adjusted to reflect future increases in Schedule of Allowance payments.

^{1/}See, e.g., CSEA v. Newman, 88 A.D. 2d 685, 15 PERB ¶7011 (3d Dep't 1982), appeal dismissed, 57 N.Y.2d 775, 15 PERB ¶7020 (1982).

5. Medicare reimbursement-retiree and spouse;
premium paid in full.

Demand 62(c)

An equity fund will be created and administered by the Health Benefit Trust Fund for the purpose of improving the programs administered by the Health Benefit Trust. Said Health Benefit Trust Funds ~~shall be paid on an annual basis, starting April 1, 1988, a lump sum amount.~~

As the Director found, the subsections of Demand 62 are separable demands, and separate determinations may accordingly be made concerning the duty to negotiate each. However, the parties both acknowledge that the Health Benefit Trust Fund referenced in Demands 62(a), (b) and (c) has in the past, and may in the future, include retirees. The Director found all three demands to be nonmandatory because, as applied, they include retirees, who are not members of the bargaining unit represented by the ATU, and who are not therefore properly persons on whose behalf bargaining demands may be made. While it is true, as contended by the ATU, that Demands 62(a) and 62(c) do not specifically refer to retirees, 62(a) refers to programs and benefits "now provided" without limitation, and 62(c) refers to "the programs administered by the Health Benefit Trust", again without limitation to those programs applicable to unit personnel. The programs which are the subject of the ATU's demands are properly deemed to cover also individuals who are not unit employees (i.e., retirees). We accordingly find that Demands 62(a) and 62(c) are nonmandatory subjects of

negotiation. Demand 62(b) is also, as found by the Director, nonmandatory because it makes explicit reference to retirees and may apply to persons who retire beyond the term of the collective bargaining agreement at issue. See, e.g., Troy UFFA, Local 2304, IAFF, 10 PERB ¶3015 (1977).

IV. Common Demand 72

The Authority may not enter into any contract, or enter into any other arrangement, which would require or permit individuals who are not TA employees covered by this agreement to perform work on TA property which is work that covered employees can and have performed, or to perform work on buses, or any other equipment owned or leased by the TA which is work that covered employees can and have performed.

In any case where the TA desires to enter into a contract to have work done which is of a kind or would serve a function that once could have been and was done by covered employees, but which the TA desires be done with skills in which employees have no training, the TA must undertake to train employees to do the work desired as soon as it begins to plan the work. It may only subcontract such work where emergency conditions make timely training of its own employees to do work impossible.

The Farming Out Committees will be retained so as to review TA contract to assure compliance with this provision.

The Director found this demand to be nonmandatory upon the ground that it seeks to preclude subcontracting of work which has not historically been exclusively unit work. As we found in Somers Faculty Ass'n, 9 PERB ¶3014 (1976), and Local No. 650, AFSCME, AFL-CIO, 9 PERB ¶3015 (1976), a demand which seeks to prevent the subcontracting of work performed by unit employees is a mandatory subject of negotiation. This

demand, however, is not limited to protection of what is unit work, but is reasonably read as requiring restoration of work no longer performed by ATU unit employees and perhaps now being performed by NYCTA personnel in other units. It is not necessary that such work be exclusively unit work, but it must at least involve what is currently unit work for the demand to be a mandatory subject of negotiation. The fact that the ATU, in the instant demand, seeks to prevent the NYCTA from subcontracting what is no longer unit work (i.e., it only need have been unit work at some time in the past) renders the demand nonmandatory.

The second paragraph of Common Demand 72 is nonmandatory because it requires the NYCTA to conduct training, a matter which we have previously found to be a nonmandatory subject of negotiation.^{2/} The third paragraph of the demand is appropriately read to refer back to the first paragraph, and removal of the first paragraph renders it meaningless. Accordingly, the third paragraph of Common Demand 72 is also declared to be a nonmandatory subject of negotiation.

V. Separate Demand 49


The authority will purchase an insurance policy covering all costs for special welfare benefits which exceed in a calendar year the sum to be agreed upon in bargaining. All claims on the special welfare plan in excess of that sum to be paid by the insurance company.

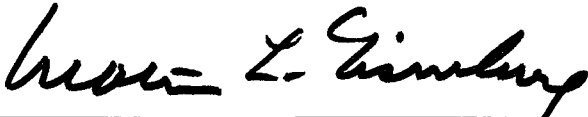
^{2/}City of Mount Vernon, 18 PERB ¶3020 (1985) (extent of training deemed a qualification for employment).

The Director found this demand to be nonmandatory because the benefits referred to have and do apply to retirees (see discussion of Demands 62(a), (b) and (c), supra). While, as we have found with respect to Common Demands 62(a) and (c), Separate Demand 49 makes no explicit mention of application to retirees, the fact that this demand refers, without limitation, to "all costs for special welfare benefits" and "all claims on the special welfare plan" (emphases added), together with the acknowledgment of the parties that retirees are in fact covered persons under the plan, renders the demand nonmandatory.

The Board therefore declares Common Demand 42, Common Demands 62(a), (b) and (c), Common Demand 72 and Separate Demand 49 to be nonmandatory subjects of negotiation and declares Common Demand 47 to be a mandatory subject of negotiation.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE PUBLIC EMPLOYEES
FEDERATION, AFL-CIO,

Charging Party,

-and-

CASE NO. U-10655

STATE OF NEW YORK (OFFICE OF THE STATE
COMPTROLLER),

Respondent.

KURT T. MINERSAGEN, for Charging Party

WALTER J. PELLEGRINI, ESQ., General Counsel
(LAUREN DE SOLE, ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

The New York State Public Employees Federation, AFL-CIO (PEF) excepts to the conditional dismissal, by the Assistant Director of Public Employment Practices and Representation, of its improper practice charge against the State of New York (Office of the State Comptroller) (State). The charge, as amended,^{1/} alleges that the State violated §209-a.1(d) of the Act when it unilaterally eliminated its past practice of reimbursing unit employees for sales taxes paid on out-of-state lodging which exceeded the parties' contractual lodging allowance. The State, in its defense to the charge, asserts

^{1/}At the pre-hearing conference conducted by the Assistant Director, PEF withdrew so much of its charge as alleged a violation of §209-a.1(a) of the Public Employees' Fair Employment Act (Act), and it is not now before us.

that the matter is covered by Article 8 of the parties' 1988-91 collective bargaining agreement, and that there is pending at arbitration a contract grievance filed by PEF which challenges the actions of the State which are the subject of the instant charge.

The Assistant Director conditionally dismissed the charge based upon the reasoning of this Board in Herkimer County BOCES, 20 PERB ¶3050 (1987). We there held, at 3109, that where, as here, the subject of an improper practice charge has also been made the subject of a grievance under a grievance procedure which ends in binding arbitration, and an issue exists concerning whether the parties' agreement covers the matter raised by the charge: "[I]t is appropriate to defer deciding whether §205.5(d) of the Act precludes the exercise of jurisdiction by PERB, pending the outcome of the grievance which has been filed". Section 205.5(d) of the Act provides that PERB "shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice."

We thus held in Herkimer County BOCES, supra, that, in those instances in which a dispute exists between the parties concerning whether their collective bargaining agreement covers the issue addressed in the improper practice charge,

and a contract grievance is pending, PERB will defer to the grievance procedure, pending a determination whether or not the issue raised in both the charge and the grievance is covered by the collective bargaining agreement, and, thus, ~~whether the charging party has waived, by its conduct at the~~ bargaining table, the right to negotiate further on the issue. Pursuant to that decision and policy, the Assistant Director conditionally dismissed the charge pending the outcome of PEF's contract grievance.

Notwithstanding the exceptions of PEF, we agree with the Assistant Director that the reasoning and standards contained in Herkimer County BOCES, supra, are at least equally applicable here. Indeed, PEF argues, in its brief before us:

The grievance alleges that the State changed its long-standing past practice dating at least to 1976 and violated Article 8 of the contract by denying reimbursement of sales tax paid on out-of-state lodging costs when the sales tax causes the lodging charge to exceed the maximum allowed for reimbursement.

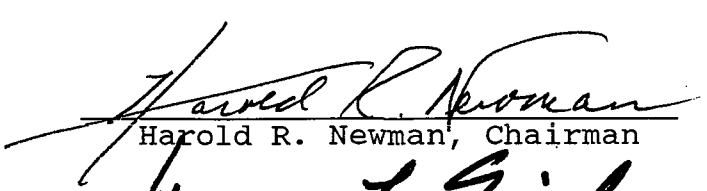
By asserting, in the context of the contract grievance, a violation of past practice, the issues raised by the grievance share a virtual identity with the claim of violation of §209-a.1(d) of the Act, which relies upon a claim of unilateral change in a past practice affecting terms and conditions of employment for its basis.

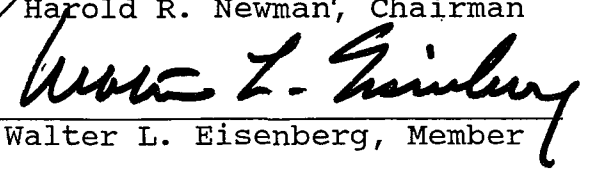
As pointed out by the State in its brief, the issue sought to be adjudicated by PEF in both the grievance forum and before PERB is the same, whether the State has the right to deny reimbursement of sales tax paid on out-of-state lodging costs, ~~when the sales tax charge exceeds the maximum allowable rate~~ established by the parties' agreement. Also, in both forums, PEF seeks a "continuation of the past practice and the making whole of employees denied reimbursement for out-of-state sales tax exceeding the maximum allowable rates of reimbursement for lodging." The grievance and charge thus both seek to establish a unilateral change in past practice and the same remedy.

Under the circumstances, the decision of the Assistant Director conditionally dismissing the charge and affording to PEF the opportunity to file a timely motion at the conclusion of the contract grievance procedure to reopen the charge upon the ground that the jurisdictional limitations contained in §205.5(d) of the Act do not apply to its charge is affirmed in its entirety.

IT IS THEREFORE ORDERED that the charge be, and it hereby is, dismissed subject to the foregoing conditions.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JAMES H. GRAF,

Charging Party,

-and-

CASE NO. U-10571

STATE OF NEW YORK (MANHATTAN DEVELOPMENTAL
CENTER) and NEW YORK STATE PUBLIC
EMPLOYEES FEDERATION, AFL-CIO,

Respondents.

JAMES H. GRAF, pro se

RICHARD E. CASAGRANDE, ESQ. (WILLIAM P. SEAMON, ESQ,
of Counsel), for New York State Public Employees
Federation, AFL-CIO

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of James H. Graf to the dismissal by the Director of Public Employment Practices and Representation (Director) of his improper practice charge against the State of New York (Manhattan Developmental Center) (State) and the New York State Public Employees Federation, AFL-CIO (PEF).

Graf alleges that the State is in violation of §§209-a.1(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) by, first, evading its contractual obligations concerning five grievances filed by Graf, and exerting improper influence upon PEF to suppress and obstruct the processing of the grievances; second, by terminating his

employment on December 13, 1988, in violation of State and Federal civil rights laws, affirmative action policies and New York State's Whistle Blower Law; and, third, by engaging in a 24-hour-a-day program of high-tech psychological torture involving the use of a "stream of consciousness machine", illegal broadcast of audio signals, sleep deprivation, and other acts.

Graf further alleges that, as to PEF, a violation of §209-a.2(a) of the Act occurred when it failed to represent him properly in connection with the disciplinary charges pending against him, when the counsel assigned by PEF to represent him withdrew from his case, and when PEF failed to assign another attorney to represent him.

The Director dismissed the charge against the State upon the ground that Graf's factually unsupported allegations failed to establish a violation of the Act. Addressing each of the three sets of allegations against the State in turn, we find as follows.

- I. Evasion of contractual responsibility and use of improper influence to suppress and obstruct contract grievance process.

Three of the five grievances referenced by Graf in his charge were filed in 1985 and 1986, and no action was taken upon them after 1986. PERB's Rules of Procedure^{1/} (Rules) require that a charge be filed within four months of the

^{1/}Rules, §204.1(a).

improper practice alleged, and we find, at the outset, that as to these grievances, the charge is untimely, since more than four months have elapsed since the State (and PEF) allegedly failed to timely process and/or pursue them.

~~As to the remaining contract grievances asserted by Graf~~ to have been ignored by the State, we find that the failure to timely process these grievances would amount to nothing more than a contract violation, if any, and does not give rise to a claim of repudiation of the collective bargaining agreement between PEF and the State such as to establish the existence of a claim of violation of §209-a.1(a) of the Act.^{2/} Neither can such factual assertions properly support an inference that it was the State's intent to improperly dominate or interfere with the internal operations of PEF. [Act, §209-a.1(b)]. We accordingly affirm the Director's dismissal of the charge against the State in these regards.

II. Termination in violation of State and Federal law and policy.

Graf's assertions that he was terminated from his employment with the State in violation of civil rights and other laws are not matters which, even if proven, fall within our jurisdiction and remedial powers. PERB's jurisdiction is limited to determinations concerning whether discriminatory action has been taken in retaliation for engagement in

^{2/}Sewanhaka CHSD, 22 PERB ¶3041 (July 11, 1989); Addison CSD, 17 PERB ¶3076, aff'g 17 PERB ¶4566 (1984).

activities specifically protected by the Act, such as engagement in employee organizational activity (Act, §202). Graf's allegation that he has been discriminated against in violation of State and Federal civil rights laws does not give rise to a claim of violation of §§209-a.1(a) and (c) of the Act, and the charge was, accordingly, properly dismissed in this regard.^{3/}

III. Psychological torture.

Similarly, we dismiss the portion of Graf's charge which alleges that the State has engaged in systematic "high-tech psychological torture". We find no cognizable claim of violation of the Act to exist. Aside from the failure to present any factual allegations in support of this claim, we conclude that the invasions of personal privacy, tampering with mail, illegal broadcasts of audio signals, audio and video surveillance in Graf's home and other allegations might, if factual, set forth civil rights or criminal law violations, but that this Board is without jurisdiction to decide such claims. We accordingly find that the Director properly dismissed all of the charges against the State in their entirety.

We now turn to the allegations made by Graf against PEF, concerning breach of the duty of fair representation. In

^{3/}See, e.g., United Federation of Teachers, Local 2, 16 PERB ¶3062 (1983).

response to the claim that he was abandoned by PEF's counsel and denied further representation in connection with his disciplinary grievance, PEF asserts that, although it indeed withdrew from representation of Graf, it did so based upon ~~his conduct in refusing to cooperate and participate in his~~ defense in a meaningful way, together with the deterioration in the attorney-client relationship acknowledged by both parties. Regardless of the merit of these respective claims, we find that the failure of the charging party to make any factual allegations supporting a claim of arbitrary, discriminatory, or bad faith withdrawal of representation warrants dismissal of the charge against PEF.^{4/}

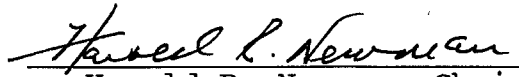
We have reviewed the remaining exceptions to the Director's decision, and find them to be without merit.^{5/}

^{4/}Graf's assertions notwithstanding, no absolute duty to represent exists, and there is nothing per se improper in an employee organization declining representation in a specific case, in the absence of evidence that such declination is arbitrary, discriminatory or made in bad faith.

^{5/}Notwithstanding Graf's assertions to the contrary, the Director is not obligated to conduct a hearing prior to dismissal of an improper practice charge, if a finding is made, as here, that PERB is without jurisdiction over the allegations of the charge and/or that the charge fails to make allegations, which if proven at a hearing, would establish a violation of the Act.

Based upon the foregoing, IT IS HEREBY ORDERED that the charge be, and it hereby is, dismissed in its entirety.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BUFFALO BOARD OF EDUCATION PROFESSIONAL,
CLERICAL, TECHNICAL EMPLOYEES ASSOCIATION,

Charging Party,

-and-

CASE NO. U-9767

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF BUFFALO,

Respondent.

SARGENT, REPKA & COVERT, P.C. (NICHOLAS J. SARGENT,
ESQ., and JAMES L. JARVIS, JR., ESQ., of Counsel),
for Charging Party

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR (KARL W.
KRISTOFF, ESQ., and ELENA CACAVAS, ESQ., of
Counsel), for Respondent

BOARD DECISION AND ORDER

The Buffalo Board of Education Professional, Clerical, Technical Employees Association (PCTEA) excepts to the dismissal of its improper practice charge against the Board of Education of the City School District of the City of Buffalo (District), which alleges that the District violated §§209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act) when, on September 9, 1987, it unilaterally upgraded the contractual salary schedules of three unit members. The assigned Administrative Law Judge (ALJ) dismissed the charge upon the ground that PCTEA waived its right to file an improper practice charge by filing a

contract grievance, which (although later withdrawn) triggered an election of forums pursuant to Article 23, Section 2(h) of the parties' collective bargaining agreement. That Article provides as follows:

~~If an employee and/or the Union submits a grievance pursuant to this Agreement, neither the employee nor the Union can simultaneously or thereafter make the occurrence which has been grieved the subject of a proceeding before any other administrative, judicial or legislative tribunal. An occurrence which is or has been the subject of a proceeding before any administrative, judicial or legislative tribunal cannot be grieved.~~

There being no dispute that PCTEA filed a contract grievance concerning the upgrade in salary schedules of the three unit members also at issue in the improper practice charge before her, the ALJ concluded that a grievance had been "submitted", even though later withdrawn, and that the foregoing contract language constituted a clear, unambiguous and explicit waiver of the right to both file a contract grievance and an improper practice charge before this Board. The ALJ further determined that no legal impediment existed to the agreement by PCTEA to the election of forums contained in the collective bargaining agreement, and, accordingly, found that a waiver of the right to file a charge had occurred.

PCTEA excepts to the ALJ decision on numerous grounds. First, it asserts that the parties are prohibited by statute,

decisional law and/or public policy from negotiating an agreement which would preclude the exercise of jurisdiction by this Board over what would otherwise constitute an improper practice charge. PCTEA cites, in support of its exception, §205.5(d) of the Act, which confers upon PERB "exclusive nondelegable jurisdiction" over improper practice charges. PCTEA further asserts that, notwithstanding the election of forum provision of the parties' collective bargaining agreement, PERB should exercise jurisdiction in this matter, because the charge alleges a §209-a.1(a) violation, a type of violation which PERB has not traditionally deferred to arbitration.

PCTEA's third exception asserts that the evidence fails to support a finding that it knowingly, intentionally and unmistakably waived its right to file an improper practice charge with PERB. Its fourth, related, exception alleges that, because its grievance was withdrawn following its filing, and was not ultimately litigated pursuant to the grievance procedure, the effect of the dismissal of the instant improper practice charge is a denial of access to any forum, rather than an election of a forum in which all issues arising out of the occurrence can be fully and finally litigated, in violation of the intent and language of the contract.

Exceptions three and four turn upon resolution of evidentiary questions. The ALJ found the contract language at issue to be sufficiently clear and unambiguous to establish that PCTEA agreed at the bargaining table that "An ~~occurrence which has been grieved [will not be] the subject~~ of a proceeding before any other administrative, judicial or legislative tribunal." It is our finding that the ALJ correctly construed the clear language of the contractual provision to constitute an election of forums by PCTEA. We further find that the ALJ correctly interpreted the "submission" of a grievance as its filing and as the point at which the election of forums is made pursuant to this language. The ALJ also correctly concluded that the language of the agreement compels the finding that the later withdrawal of the grievance has no effect upon the election earlier made. Both exception three and exception four are accordingly denied, and the determinations of the ALJ with respect to the meaning and effect of the contract language are affirmed.

We now turn to the issues raised by PCTEA in its first two exceptions. PCTEA asserts, first, that an agreement which "would foreclose PERB from considering an improper practice charge" is unenforceable because it relates to a prohibited subject of bargaining based upon statute (§205.5(d) of the Act), decisional law (citing Cohoes CSD v.

Cohoes Teachers Association, 40 N.Y.2d 774, 390 N.Y.S. 2d 53, 9 PERB ¶7529 (1976) and other cases), and public policy.

While it is certainly true that §205.5(d) of the Act confers "exclusive nondelegable jurisdiction" upon PERB for the disposition of improper practice charges, we do not and have not construed this language to mean that parties may not waive rights conferred by the Act. For example, in Sachem CSD, 21 PERB ¶3021 (1988), we dismissed a charge upon the ground that the charging party had waived, by contract, its right to negotiate concerning terms and conditions of employment not covered by its collective bargaining agreement with the respondent school district until the commencement of negotiations for a successor agreement. If a party may, by contract, waive a substantive Taylor Law right, such as the right to negotiate terms and conditions of employment, we perceive no reason why parties may not also waive the right to proceed both under a grievance procedure and before PERB simultaneously with respect to the same issue.^{1/} We thus construe the parties' agreement in the instant case not as divesting PERB of jurisdiction, but as establishing an election of forums which, once exercised, gives rise to a waiver of the right to proceed in an alternative forum,

^{1/}Indeed, in Williamsville CSD, 8 PERB ¶3061 (1975), although we declined to dismiss an improper practice charge upon an election of forums ground, we did so not because such an election would be improper, but because the election was not effectuated in fact.

including PERB. PERB's jurisdiction is thus unaffected by a contractual waiver by a party of the right to file a charge before us.

In Professional Firefighters Association, Inc., Local 274, IAFF, 10 PERB ¶3043 (1977), PERB considered the duty to bargain concerning inclusion in a collective bargaining agreement of language which would reiterate certain of the protections of the Act and create a contractual remedy for statutory wrongs. We held, at 3082, such a demand to be a nonmandatory subject of negotiations, "[i]n view of the availability of a prescribed statutory method for resolving improper practices, and an expressed legislative purpose to vest solely in this Board the application of that method" In that case, it was necessary only for us to determine that the at-issue proposal was not a mandatory subject of negotiations. To the extent that it may be construed as establishing that the creation of a contractual forum for violations of the Act is not merely nonmandatory, but is prohibited, we decline to follow it.^{2/} The language at issue in the instant case, may, in keeping with the principle enunciated in Professional Firefighters Association, supra,

^{2/}PCTEA aptly points out that in that case, in dicta, we stated the following: "While the proposal would not, as it indeed could not under the Law, preclude the filing of an improper practice charge with this Board, it would provide direct access to the grievance procedure and to arbitration as an alternative recourse." (at 3082).

be nonmandatory, but we decline to find that it is a prohibited subject of negotiations under the Act or that it contravenes public policy. In any event, the circumstances which gave rise to the dicta language of that case is distinguishable from that of the instant case because, here, the contract language does not preclude the filing of an improper practice charge, but merely requires the grievant or PCTEA to elect to proceed either with a contract grievance or before PERB. The election rested with PCTEA, and it chose to file a contract grievance in lieu of an improper practice charge. It is not necessary for us to decide here whether an absolute bar to the filing of improper practice charges pursuant to agreement would be enforceable or not.

PCTEA also cites to the decision of the Court of Appeals in Cohoes CSD v. Cohoes Teachers Association, supra, in support of the proposition that contract language which delegates to another entity decision-making which is vested by statute in a party is unenforceable. In Cohoes, the Court of Appeals refused to enforce an arbitration award which granted tenure to a probationary teacher pursuant to a collective bargaining agreement which prohibited the termination of teachers without just cause. The Court held that a provision in an agreement which would divest the Board of Education of its statutory authority and responsibility to make tenure decisions is unenforceable. PCTEA argues that

recognition by PERB of a waiver of the right to proceed both under a contractual grievance procedure and before it constitutes, in essence, an improper delegation or abnegation of our jurisdiction. We disagree. While, as we held in ~~Professional Firefighters Association, supra~~, we would not require parties to bargain concerning creation of a contractual remedy for violations of the Act, if parties choose to so negotiate, we construe their actions as constituting nothing more than a waiver of a statutory right to file a charge and not as a divestiture of our jurisdiction. We find no public policy, statutory or decisional law basis upon which it must be or should be said that PCTEA is not bound by its agreement. Its exception in this regard is denied.

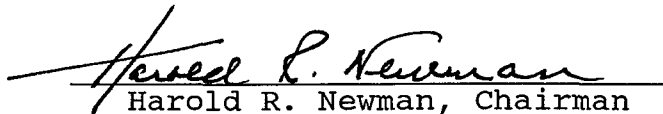
Finally, we turn to PCTEA's argument that, because of the particular nature of the violation of the Act alleged (that is, a §209-a.1(a) violation), our policy against deferring such cases to arbitration should be extended to reject a waiver of the right to file a subsection "a" charge here. While it is indeed true that we have declined to defer subsection "a" cases to arbitration,^{3/} we have done so in circumstances in which the charge is properly before us. In contrast, the instant charge is not properly before us

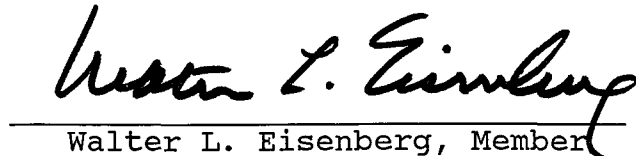
^{3/}See, e.g., Connetquot CSD, 19 PERB ¶3045 (1986); Addison CSD, 17 PERB ¶3076 (1984).

because PCTEA waived its right to file by its act of filing a contract grievance relating to the same issue of payments above the salary schedule to three unit members. It is accordingly unnecessary for us to reach the question whether, if a grievance were now pending, and if a charge were properly before us, deferral would be appropriate.

Based upon the foregoing, we find that PCTEA exercised an election of forums and, in doing so, waived its right to file a charge before PERB. We decline to declare such an election unenforceable and, accordingly, decline to exercise jurisdiction over the instant charge. The decision of the ALJ is therefore affirmed, and the charge is dismissed in its entirety. SO ORDERED.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JAMESVILLE-DEWITT FACULTY ASSOCIATION,
NEW YORK STATE UNITED TEACHERS, AFT #2755,

Charging Party,

-and-

CASE NO. U-10269

JAMESVILLE-DEWITT CENTRAL SCHOOL
DISTRICT,

Respondent.

HELEN W. BEALE, for Charging Party

GARRY A. LUKE, for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Jamesville-DeWitt Faculty Association, New York State United Teachers, AFT #2755 (Association) to an Administrative Law Judge (ALJ) decision upholding, in part, an improper practice charge alleging that the Jamesville-DeWitt Central School District (District) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it failed to take a ratification vote on a tentative agreement reached by the parties. Although finding that no ratification vote was taken, the ALJ refused to find that the failure resulted in a waiver of the right to conduct a ratification vote, and directed, as remedial relief, that the District's Board of

Education (Board) conduct a ratification vote. The District has not excepted to the ALJ decision.

The Association's exceptions fall into two categories. First, the Association raises procedural objections to the ~~conduct of the proceedings before the ALJ.~~ These include claims that the ALJ recommended at the pre-hearing conference to the Association representatives that the charge be withdrawn based upon the information then before her; that undue delay in the processing of the charge took place; that a copy of the ALJ decision was erroneously sent to the Association president and the District Superintendent rather than only to the parties' designated representatives; that a motion for particularization made by the Association was improperly denied; and that the ALJ erroneously overruled an objection made by the Association to the use of leading questions. Second, the Association objects to the ALJ's substantive holdings that the District's Superintendent, who also serves as its chief negotiator, did not fail to affirmatively support the tentative agreement and that the remedy of directing a ratification vote adequately redresses the violation found. We will take each of these matters in turn.

Assuming it to be true that the ALJ recommended to the Association that it withdraw its charge based upon the information presented at the pre-hearing conference, there is

no claim whatsoever that such a recommendation was based upon anything other than the ALJ's good faith application of the relevant case law to the facts before her, representing a preliminary evaluation of the merits of the charge. This evaluation and recommendation is a customary undertaking which PERB expects its ALJs to perform in the course of pre-hearing conferences in an effort to avoid unnecessary litigation of charges which either lack merit or warrant settlement.^{1/} It is, in any event, quite apparent that the ALJ based her decision and recommended order solely upon the evidence presented at the hearing and made a de novo determination, upholding, at least in part, the Association's claims, and establishing without doubt the absence of prejudice and bias on the part of the ALJ. This exception is accordingly denied.

With respect to the issue of delay in the processing of the charge, the record discloses that the charge was filed on July 14, 1988, and that the Association representatives would not be available for a pre-hearing conference or hearing on numerous dates between July 25 and August 29, 1988. The pre-hearing conference was in fact conducted on August 18, 1988, at which time a motion for particularization filed by the

^{1/}The form letter sent to all parties announces that "[t]he purpose of the conference is to assist the parties in settling the matter or, in the alternative, to clarify the issues and obtain stipulations of fact."

Association was discussed. By letter dated September 12, 1988, the ALJ confirmed the discussions which took place at the pre-hearing conference and formally denied the motion for particularization. The September 12 letter requested that ~~the parties submit any response deemed appropriate to the~~ statements contained therein. Thereafter, by letter dated October 13, 1988, the matter was scheduled for hearing on December 14. Briefs were filed, by agreement of the parties, on February 10, 1989, and a decision was mailed to the parties by May 31, 1989. While this Board and its staff continually seek to achieve improvements in the speed with which cases are handled, the time frame within which this matter was handled before the ALJ was reasonable and necessitated by staff workload. This exception is accordingly denied.

The claim that the ALJ evidenced bias by forwarding copies of the decision and recommended order directly to the parties in addition to their representatives is totally lacking in merit. ALJs do not perform the task of mailing decisions and it is patently absurd for the Association to suggest that sending copies of the decision to both parties was directed by the ALJ and "reflect[s] a bias against the charging party and an abuse of the process." The exception is denied.

We turn now to the portion of the Association's exceptions which assert that the ALJ erroneously denied it's motion for particularization. We have reviewed the charge, the answer filed by the District, and the motion for particularization, and affirm the ALJ's denial of the motion. The motion for particularization represents nothing more than a discovery device, seeking responses to questions like the following:

When and where was the Board of Education presented with the written initialed agreements? Please identify (by name and position) all persons who attended such meeting. What was said and who said it?

As §204.3(d) of our Rules of Procedure (Rules) clearly states, a motion for particularization of an answer is appropriate only:

If the statement of facts supporting any affirmative defense is believed by a charging party to be so vague and indefinite that such charging party cannot reasonably be expected to address them in an expeditious manner at a hearing.

The District's answer in this matter is clear and concise, admitting and denying the specific allegations of the charge, and raising four affirmative defenses which are clearly understood to establish that the District contended either that the actions of the Board constituted a "vote" or, alternatively, that a specific "vote" was not required by the ratification procedure agreed upon by the parties. The

District's affirmative defenses are, without question, sufficiently unambiguous to enable the Association to proceed at the hearing in an expeditious manner. Indeed, at no point during the hearing process did the Association assert that it was prejudiced by the denial of the motion in the presentation of defense evidence which surprised or confused the Association. This exception is denied as meritless.

Finally, we address the Association's exception which alleges that the ALJ improperly overruled objections to the use of leading questions by the District representative in examining District witnesses. We have carefully reviewed the record in this regard, and find only one question to which an Association representative objected, and which the ALJ overruled. That question appears in the following context:

Q. The communication that you sent out to the Board prior to your meeting with them on June 6th, do you recall indicating to them that you reached a tentative agreement with the Association?

A. Tentative agreement, yes.

Q. Did you identify the length of that agreement?

A. Yes

Q. And that would have been --

A. Two years

Q. Did you identify the other items agreed upon?

A. Yes.

Q. Was it specifically "we've agreed upon other items" or "here are the other items we agreed upon" with a little explanation thereafter; a summary?

MS. BEALE: He's leading the witness. I'm objecting to the characterization.

LAW JUDGE: There's been a lot of leading of witnesses throughout this entire proceeding. I'll allow the question.

MR. LUKE: Did you get an answer? Read the question back.

(Pending question read)

THE WITNESS: My answer is that there was a summary of the items that were tentatively agreed to at the table.

MR. LUKE: I have nothing further.

LAW JUDGE: Do you have any recross?

MS. BEALE: No.

LAW JUDGE: You're excused.

It is our determination that the ALJ acted within her discretion in overruling the objection to the particular question to which the Association representative objected and we do not construe the question and answer to have a prejudicial effect upon the Association's case. The exception is denied.

In its exceptions to the merits of the ALJ decision and recommended order, the Association asserts that the ALJ erred in failing to find that it alleged in its charge and proved at the hearing that the District's Superintendent failed to support the tentative agreement reached between the parties and affirmatively seek ratification of the agreement, as

required by the Act.^{2/} The Association also asserts that, having found that the District failed to conduct a ratification vote as required by the parties' ground rules, the ALJ erred in failing to find that the District waived its right to conduct a ratification vote.

We agree with the finding of the ALJ that the District failed to conduct a ratification vote, as required by the parties' ground rules. However, we construe this failure not simply as a technical failure to conduct a formal vote, but as a failure to engage in the ratification process contemplated by and preceding a vote. There is no doubt that Superintendent of Schools Spanneut, who acted as the chief negotiator on behalf of the District, engaged in discussions with the Board of Education of the District concerning a proposed agreement, nor is there any doubt that Dr. Spanneut affirmatively recommended support of the proposed agreement. There is also no doubt that the Board consensus was that the proposed agreement was not acceptable and that the Board suggested to Dr. Spanneut that negotiations continue. We nevertheless find that the discussions which took place did not amount to ratification or rejection of a tentative signed agreement within the meaning of the parties' ground rules and common practice for the following reasons. Pursuant to the

^{2/}See, e.g., City of Saratoga Springs, 20 PERB ¶13031 (1987), and cases cited at footnote 6 therein.

Association and District representatives' agreement, there were to be two meetings, on June 6 and June 20; at the first, the Superintendent would present the tentative agreement and explain it, and then, at the second meeting, the Board would conduct a ratification vote. However, the minutes of the Board meetings for both of those dates reflect only that the Board went "to executive session to discuss negotiations." The minutes reflect no acknowledgment that negotiations had been completed and that ratification of the signed proposed agreement was the issue pending before the Board in contrast to the procedure which had been followed by the District in prior years wherein a clear "approval" vote was conducted and reflected in meeting minutes. Second, the Superintendent testified that although he provided to the Board members a summary of the proposed items to be contained in an agreement, he did not provide a copy of the signed agreement, nor did he inform the Board members that he had, on behalf of the District, entered into and signed a tentative agreement with the Association. Indeed, the testimony of the District's witnesses establishes nothing more than that the Superintendent was seeking input from the Board with respect to the handling of negotiations. We construe the term "ratification" to include at least the following elements: first, the ratifying body must be aware that negotiations have been completed and that its negotiating representatives

have reached an agreement subject only to ratification; second, while members of the ratifying body may have and communicate differing reasons for voting to ratify or reject the agreement, the agreement is ratified or rejected as a whole, and not on a piecemeal basis; third, the negotiating representatives must (with certain limited exceptions) affirmatively support ratification; and fourth, a ratification decision must be clearly and unequivocally made and communicated.


In the instant case, the record establishes that the Board did not perceive its role at its meetings of June 6 and June 20, 1988 as engaging in ratification and a vote thereon. Instead, it declined to adopt the Superintendent's recommendation concerning how negotiations should be concluded and directed him to continue in his efforts. Having failed to abide by its ground rule requiring ratification, we affirm the ALJ's finding that the District violated §209-a.1(d) of the Act. We find, however, that the remedial relief recommended by the ALJ does not adequately redress the violation found. The parties agreed, at the behest of the District, that "Written items agreed to at the table will be subject to ratification by the Board of Education and the JDFA". The failure of the District to make a ratification decision results in the waiver of its right to

do so.^{3/} The appropriate remedy under these circumstances is that the District be directed, at the request of the Association, to execute the collective bargaining agreement reached by the parties on May 24, 1988.

~~NOW, THEREFORE, WE ORDER that the District:~~

1. Execute, upon the request of the Jamesville-DeWitt Faculty Association, New York State United Teachers, AFT #2755, a collective bargaining agreement, effective July 1, 1988 to June 30, 1990, embodying the agreement reached by the parties on May 24, 1988;
2. Negotiate in good faith under the Act with the Jamesville-DeWitt Faculty Association, New York State United Teachers, AFT #2755;
3. Sign and post the attached notice at all locations used by it for written communications to members of the bargaining unit represented by the Jamesville-DeWitt Faculty Association, New York State United Teachers, AFT #2755.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

^{3/}See City of Saratoga Springs, supra, and Union Springs Central School Teachers Ass'n., 6 PERB ¶3074 (1973).

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees in the unit represented by the Jamesville-DeWitt Faculty Association, New York State United Teachers, AFT #2755, that the Board of Education of the Jamesville-DeWitt Central School District will:

1. Execute, upon the request of the Association, a collective bargaining agreement, effective July 1, 1988 to June 30, 1990, embodying the agreement reached by the parties on May 24, 1988; and
2. Negotiate in good faith under the Act with the Association.

JAMESVILLE-DEWITT CENTRAL SCHOOL DISTRICT
.....

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3367

PATCHOGUE-MEDFORD LIBRARY,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All employees in the title of Pages.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 264, TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

-and-

CASE NO. C-3436

TOWN OF ATTICA,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Teamsters Local 264, Teamsters, Chauffeurs, Warehousemen and Helpers of America has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Highway Department employees including all full-time and regular part-time machine operators and the Deputy Highway Superintendent.

Excluded: Highway Superintendent and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 264, Teamsters, Chauffeurs, Warehousemen and Helpers of America. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FEDERATION OF POLICE OFFICERS, INC.,

Petitioner,

-and-

CASE NO. C-3440

VILLAGE OF MOUNT KISCO,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

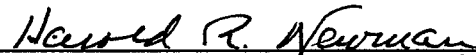
IT IS HEREBY CERTIFIED that the United Federation of Police Officers, Inc. has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees in the titles of Intermediate Typists, Intermediate Account Clerk/Typist, and Senior Typist.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Federation of Police Officers, Inc. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PATROLMAN'S BENEVOLENT ASSOCIATION,
TOWN OF FALLSBURG POLICE DEPARTMENT,

Petitioner,

-and-

CASE NO. C-3520

TOWN OF FALLSBURG,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Patrolman's Benevolent Association, Town of Fallsburg Police Department has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All regular, full-time police dispatchers employed by the employer in its South Fallsburg Facility.

Excluded: All other employees of the Town of Fallsburg.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Patrolman's Benevolent Association, Town of Fallsburg Police Department. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SUPPORT STAFF ASSOCIATION OF THE TOMPKINS
COUNTY PUBLIC LIBRARY,

Petitioner,

-and-

CASE NO. C-3535

TOMPKINS COUNTY PUBLIC LIBRARY,

Employer,

-and-

TOMPKINS COUNTY LIBRARY UNIT OF TOMPKINS
COUNTY LOCAL 855, CIVIL SERVICE EMPLOYEES
ASSOCIATION, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Support Staff Association of the Tompkins County Public Library has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described

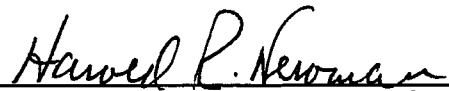
below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Page, Library Clerk, Cleaner, Senior Stenographer, Data Processing Operator, Principal Library Clerk, Audio Visual Aide, Library Accounts Manager, Senior Library Clerk, Typist and Library Assistant.

Excluded: Director, Assistant Director and professional library staff.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Support Staff Association of the Tompkins County Public Library. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HAMBURG POLICE OFFICERS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3546

TOWN OF HAMBURG,

Employer,

-and-

SOUTHTOWNS POLICE CLUB, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Southtowns Police Club has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All classified competitive Civil Service Police Officers in the Town of Hamburg Police Department, which includes all Patrolmen, Detectives and Detective Sergeants.

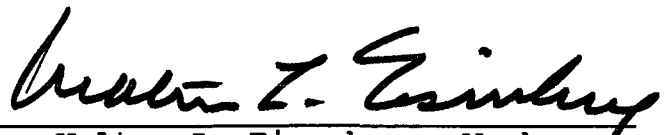
Excluded: Chief of Police, all Captains, all Detective Lieutenants, all Lieutenants and all others.

~~FURTHER, IT IS ORDERED~~ that the above named public employer shall negotiate collectively with the Southtowns Police Club, Inc. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNION LOCAL 65, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Petitioner,

-and-

CASE NO. C-3383

VILLAGE OF DRYDEN,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Union Local 65, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time police officers.

Excluded: Chief of police and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Union Local 65, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF ELLICOTT POLICE UNIT, LOCAL 807,
CHAUTAUQUA COUNTY, CSEA, INC., AFSCME,
AFL-CIO,

Petitioner,

-and-

CASE NO. C-3545

TOWN OF ELLICOTT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Town of Ellicott Police Unit, Local 807, Chautauqua County, CSEA, Inc., AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time police officers and sergeants.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Town of Ellicott Police

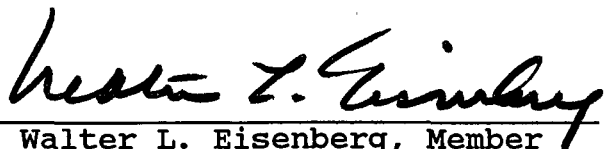
~~Unit, Local 807, Chautauqua County, CSEA, Inc., AFSCME, AFL-CIO.~~

The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TRAINMASTERS BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3534

NEW YORK CITY TRANSIT AUTHORITY,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Trainmasters Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees in the title of Trainmaster.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Trainmasters Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

YORKTOWN SUPERIOR OFFICER'S BENEVOLENT
ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3531

TOWN OF YORKTOWN,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Yorktown Superior Officer's Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

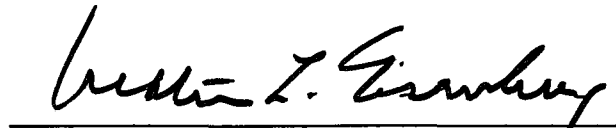
Unit: Included: Police Lieutenant.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Yorktown Superior Officer's Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and ~~confer in good faith with respect to wages, hours, and other~~ terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: September 12, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member